

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

1) BARBARA CLIMER,)
Plaintiff,)
vs.) No. 22-cv-00299-JFH
1) DOLGENCORP, a foreign limited liability)
Company, d/b/a DOLLAR GENERAL,)
Defendant and Cross-Claimant,)
and)
1) CURTS REALTY, LLC, an Oklahoma limited liability)
Company,)
Defendant and Defendant on Cross-Claim.)

**AMENDED CROSS-CLAIM OF DEFENDANT, DOLGENCORP, LLC,
d/b/a DOLLAR GENERAL STORE #02626**

COMES NOW, the Defendant, Dolgencorp, LLC, d/b/a Dollar General Store #02626, (*hereinafter “Dolgencorp”*) by and through counsel, Gary W. Farabough, of the law firm of Pasley Farabough and Mouledoux, and for their cause of action against the defendant, Curts Realty, LLC, an Oklahoma limited liability company, New Owner, Lessor (*hereinafter “Curts Realty, LLC”*), respectfully states and alleges as follows:

1. Counsel for Defendant has conferred with Plaintiff’s Counsel, Attorney Loren Toombs, and Plaintiff has no objection to Defendant’s Cross-Claim adding Curts Realty, LLC, as Defendant.

2. Curts Realty, LLC, is the owner of the property where the alleged incident occurred, and is liable to Dolgencorp because of contractual obligation they incurred in an Assignment and Assumption of Lease entered into on the 30th day of March, 2018 (Exhibit “F” and Exhibit “G” attached hereto and made a part hereof as if set out in full). In connection with the sale, the seller Muskogee Property Shopping Center, LLC, a Missouri limited liability company, assigned and transferred its interest in the Lease, and any and all security deposits thereunder or relating thereto.

Curts Realty, LLC, has assumed and agreed to perform all of the landlord’s obligation under the Lease from and after March 30, 2018. See original Lease entered into the 17th day of October, 1991 (Exhibit “A” attached hereto and made a part hereof as if set out in full); a Lease dated January 18, 1999, (Exhibit “B” attached hereto and made a part hereof as if set out in full); Lease Modification Agreement No. 1, (Exhibit “C” attached hereto and made a part of as if set out in full; Lease Modification Agreement No. 2 (Exhibit “D” attached hereto and made a part of as if set out in full; and Lease Modification Agreement No. 3, (Exhibit “E” attached hereto and made a part of as if set out in full.

3. The plaintiff alleges she was injured when she tripped over a damaged threshold at the front door of the store. The premises where the accident happened was owned by Curts Realty, LLC, owner, and it was their responsibility under the terms of the Lease to maintain the property and hold the Defendant, Dolgencorp harmless. See Paragraphs VI and XXIII of the Lease dated October 17, 1991, which is attached to the Cross-Claim as Exhibit “A” and made a part hereof for all purposes as if set out in full. It was their continued responsibility under the terms of the Lease dated January 18, 1999, which is attached as Exhibit “B” and made a part hereof as if set out in full. Paragraphs V and XX of Exhibit “B” state that the Lessor is responsible to maintain the property and agrees to hold Lessee harmless from any and all claims, which may arise from, on in

or about the demised premises when such claims arise out of or are caused in whole or in part by a defective, dangerous, or unsafe condition of the premises, equipment, fixtures, or appurtenances required by law or the terms hereof to be maintained by Lessor.

4. This claim arises out of the transaction or occurrence that is the subject matter of the original action and therefore is a proper subject for a Cross-Claim.

WHEREFORE, Dolgencorp, LLC, asks the Court to render judgment for and against Curts Realty, LLC, Lessor, for the full amount of any judgment which may be rendered against Dolgencorp and for indemnification of all attorney fees, costs and expenses incurred by Dolgencorp in the defense of this lawsuit and for such other and further relief as the Court deems equitable.

JURY TRIAL DEMANDED.

Respectfully Submitted,

By: S/Gary W. Farabough
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Dolgencorp, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2023, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Patrick Wandres
Loren Toombs

s/Gary W. Farabough
GARY W. FARABOUGH